



## **Agricultural Marketing Service**

**7 CFR Parts 959 and 980**

**[Docket No. AMS-SC-21-0003; SC21-959-2 PR]**

### **Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the proposed termination of the Federal marketing order regulating the handling of onions grown in South Texas and the rules and regulations issued thereunder. A corresponding change would be made to the onion import regulation as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be submitted to the Docket Clerk electronically by Email:

MarketingOrderComment@usda.gov or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at:

<http://www.regulations.gov>. All comments submitted in

response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Abigail.Campos@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes the termination of regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The

South Texas Onion Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

This proposed rule is also issued under section 8e of the Act (7 U.S.C. 608e-1), which provides whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States (U.S.) in any district in which the handler is an inhabitant, or has his or her principal

place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The Order has been in effect since 1961 and provides the South Texas onion industry with authority for grade, size, quality, pack, and container regulations, research, and promotion programs, as well as authority for inspection requirements. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order is locally administered by the Committee and is funded by assessments imposed on handlers.

This rule proposes termination of the Order and the rules and regulations issued thereunder. The Order regulates the handling of onions grown in South Texas. This action is based on the results of a continuance referendum in which producers failed to support the continuation of the Order. USDA believes termination of this program would be appropriate as the Order is no longer favored by industry producers.

Section 959.84(d) of the Order provides that USDA shall conduct a referendum within six years after the establishment of the Order and every sixth year thereafter to ascertain whether continuance is favored by producers.

The section also states USDA would consider termination of the Order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of onions represented in the referendum favor continuance. As required by the Order, USDA held a continuance referendum among South Texas onion producers from September 21 through October 13, 2020, to determine if they favored continuation of the program.

Ballots were mailed to 71 producers in the South Texas production area. For the referendum, 23 valid ballots were cast. The results show 57 percent of the producers voting, who produced 53 percent of the volume represented in the referendum, favored continuation of the program. The Order failed to meet both of the two-thirds criteria for continuance, demonstrating a lack of the producer support needed to carry out the objectives of the Act.

Section 608c(16) (A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Based on the foregoing, and pursuant to § 608c(16) (A) of the Act and § 959.84 of the Order, USDA is considering termination of the Order. If USDA decides to terminate the Order, trustees would be appointed to conclude and liquidate the affairs of the Committee and would continue in that capacity until discharged by USDA. In addition, USDA would

notify Congress of the proposed termination of the Order not later than 60 days before the Order is terminated pursuant to § 608c(16) (A) of the Act.

A notice announcing the results of the referendum was issued on January 5, 2021. On March 15, 2021, USDA suspended collection of assessments under the Order while the proposed termination of the program is being processed by USDA. All other provisions, including grade and size requirements, remain in effect until the Order is terminated.

Section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this proposed rule would terminate regulations for domestically produced onions, a corresponding change to the imported regulations would also be required.

Minimum grade, size, maturity, and quality requirements for onions imported into the United States are established under § 980.117. Currently, from March 10 through June 4 of each marketing year, imported onions, not including pearl and cipolline onions, must comply with grade, size, quality, and maturity requirements imposed under the Order for South Texas onions. From June 5 through March 9 of each marketing year, and for the entire

year for pearl and cipolline onions, imported onions are subject to the requirements of Marketing Order 958, which regulate onions handled in Idaho and Oregon. This proposal would amend § 980.117 by removing the requirements based on the Order for South Texas onions from March 10 through June 4. The import requirements for onions based on Marketing Order 958 would remain in effect from June 5 through March 9, and for the entire year for pearl and cipolline onions.

### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 70 producers of onions in the production area and approximately 30 handlers subject to regulation under the Order. There are 53 onion importers. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual



receipts of less than \$1,000,000, and small agricultural service firms are defined as those having annual receipts of less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the weighted producer price for South Texas onions during the 2018-19 season was around \$9.09 per 50-pound equivalent. The Committee reports total onion shipments were approximately 4.2 million 50-pound equivalents. Using the weighted average price and shipment information, the total 2018-19 crop value is estimated at \$38.2 million. Dividing the crop value by the estimated number of producers (70) yields an estimated average receipt per producer of \$545,714, so the majority of producers would have annual receipts of less than \$1,000,000.

The average handler price for South Texas onions during the 2018-19 season was approximately \$11.00 per 50-pound equivalent. Using the average price and shipment information, the total 2018-19 handler crop value is estimated at \$46.2 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of \$1.54 million, which is below the SBA threshold for small agricultural service firms. Thus, the majority of onion producers and handlers may be classified as small entities.

Mexico, Peru, and Canada are the major onion producing countries exporting onions to the United States. In 2019, shipments of onions imported into the United States totaled approximately 543,343 metric tons. Information from USDA's Economic Research Service indicates the dollar value of imported onions was approximately \$431 million in 2019. Using this value and the number of importers (53), most importers would have annual receipts of less than \$30,000,000 for onions.

This rule proposes termination of the Order and the rules and regulations issued thereunder, regulating the handling of onions grown in South Texas. Section 959.84(d) of the Order requires USDA to conduct a referendum every sixth year to ascertain whether continuance is favored by producers. USDA would consider termination of the Order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of onions represented in the referendum favor continuance. Based on the results of a recent continuance referendum, support for the Order failed to meet the two-thirds requirement by vote or volume indicating continuation of the program is no longer favored by industry producers. Consequently, USDA is considering termination of the Order. Corresponding changes would also be made to sections of the requirements for onions imported into the United States.

Marketing Orders provide industries with tools to assist producers and handlers in addressing challenges facing the industry. These tools include: establishing minimum grade, size, quality, and maturity requirements, setting size, capacity, weight, dimensions or pack of the containers, collecting and publish market information useful to growers and handlers, conducting research and promotions, and establishing volume control requirements. Each Marketing Order is different, with the industries deciding the authorities needed and the scope of their Marketing Order. Marketing Orders are approved by producers through referenda and regulate handlers to ensure compliance with all requirements. The authority of a Marketing Order allows each industry to create a local administrative committee that is made up of growers and/or handlers that work collectively to solve industry problems.

Establishing minimum grade, size, quality, and maturity requirements aims to stabilize market conditions for fresh fruit and vegetables. The goal of these requirements is to help balance consumer demands for high quality products and in turn provide better returns to producers for producing and delivering more consistent, quality products to the market. They are also expected to promote repeat consumer purchases and increase demand for a high-quality product.

The Order has been in effect since 1961 and provides the South Texas onion industry with authority for grade, size, quality, pack, and container regulations, research, and promotion programs, as well as authority for inspection requirements. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order is locally administered by the Committee and is funded by assessments imposed on handlers.

As this change would terminate the Order and all the rules and regulations issued thereunder, the perceived benefits correlated with the Order would be lost. However, there would also be savings by eliminating costs associated with the Order, which include the payment of assessments and costs related to inspection.

A review of the referendum results shows that producers failed to reach the necessary threshold for the vote to pass by either vote or by volume as specified in the Order, indicating the benefits of the program no longer outweigh the costs to handlers and producers. Although marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers. Termination of the Order, and the resulting regulatory relaxation, could therefore be expected to reduce costs for both producers and handlers.

Pursuant to section 8e of the Act, this action would also modify the onion import regulation (7 CFR 980.117).

That regulation currently specifies grade, size, quality, and maturity requirements based on those requirements established under Marketing Order 959. With this change, those requirements would no longer be in effect from March 10 through June 4 of the marketing year. While this change could benefit importers through a reduction in costs, the loss of grade and size requirements both from the domestic production as well as the imported product could negatively impact the onion market.

An alternative to this action would be to maintain the Order and its current provisions. However, the Order requires that a continuance referendum be conducted every sixth year to determine industry support for the program. The results of a recently held producer continuance referendum on the Texas onion program indicated a lack of producer support, indicating that the Order no longer meets the needs of producers and handlers. Therefore, this alternative was rejected, and USDA is considering terminating the Order.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection

requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. Termination of the Order, and the reporting requirements prescribed therein, would reduce the reporting burden on South Texas onion handlers by an estimated 1.83 hours per handler. Handlers would no longer be required to file forms with the Committee, which is expected to reduce industry expenses. This rule would not impose any additional reporting or recordkeeping requirements on either small or large onion handlers.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The producer referendum was well publicized in the production area, and referendum ballots were mailed to all known producers. As such, producers of South Texas onions had an opportunity to indicate their continued support for the Order. Further, interested persons are invited to

submit comments on this proposed rule, including the regulatory and information collection impacts of this proposed action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

This rule invites comments on the proposed termination of Marketing Order 959, which regulates the handling of onions grown in South Texas. A 60-day comment period is provided to allow interested persons to respond to this proposal. All comments timely received will be considered before a final determination is made on this matter. Termination of the Order provisions would become effective only after a 60-day notification to Congress as required by law.

#### **List of Subjects**

##### **7 CFR Part 959**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

## **7 CFR Part 980**

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be removed and 7 CFR part 980 is proposed to be amended as follows:

### **PART 959 [REMOVED]**

1. Part 959 is removed.

### **PART 980 - VEGETABLES; IMPORT REGULATIONS**

2. The authority citation for 7 CFR part 980 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

3. In § 980.117, revise paragraphs (a) and (b) to read as follows:

#### **§ 980.117 - Import regulations; onions**

- (a) *Findings and determinations with respect to onions.*

- (1) Under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby found that:

- (i) Grade, size, quality, and maturity regulations have been issued regularly under Marketing Order No. 958, as amended;

- (ii) The marketing of onions can be reasonably distinguished by the seasonal categories, i.e., late summer and early spring. The bulk of the late summer crop is



harvested and placed in storage in late summer and early fall and marketed over a period of several months extending into the following spring. But the onions harvested from the early spring crop are generally marketed as soon as the onions are harvested. The marketing seasons for these crops overlap;

(iii) Concurrent grade, size, quality, and maturity regulations under the marketing order are expected in future seasons, as in the past.

(2) Therefore, it is hereby determined that: Imports of onions during the June 5 through March 9 period, and the entire year for imports of pearl and cipolline varieties of onions, are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958).

(b) *Grade, size, quality, and maturity requirements.* On and after the effective date hereof no person may import onions as defined herein unless they are inspected and meet the following requirements: During the period June 5 through March 9 of each marketing year, and the entire year for pearl and cipolline onions, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

\* \* \* \* \*

Erin Morris, Associate Administrator,  
Agricultural Marketing Service.

[FR Doc. 2021-16495 Filed: 8/4/2021 8:45 am; Publication Date: 8/5/2021]